#### UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

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AMERICAN MEDICAL RESPONSE OF : CONNECTICUT, INC. :

: Case No. 01-CA-263985

versus :

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INTERNATIONAL ASSOCIATION OF EMTS AND PARAMEDICS LOCAL R1-999, NAGE / SEIU LOCAL 5000

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# RESPONDENT'S EXCEPTIONS TO DECISION ISSUED BY <u>ADMINISTRATIVE LAW JUDGE ANDREW GOLLIN</u>

As the Respondent in the above-captioned case, American Medical Response of Connecticut, Inc. (hereafter, the "Company") hereby submits, by and through its Undersigned Counsel, these Exceptions to the Decision (hereafter, the "Decision") issued by Administrative Law Judge Andrew Gollin (hereafter, the "Judge") on March 11, 2021.

# **INTRODUCTION**

Exception No. 1: The Company excepts to the Judge's finding that, in around April 2020, the Charging Party (hereafter, the "Union") became concerned that the Company was increasingly eliminating or "browning out" the represented employees' scheduled shifts while increasingly using unrepresented employees to perform the represented employees' work, as well as the Judge's finding that the

Union made a series of information requests to investigate those concerns. <u>See</u> Decision, page 1.

<u>Grounds</u>: The Judge's findings are not supported by the record.

Exception No. 2: The Company excepts to the Judge's finding that, on July 8, 2020, the Union filed the first of two grievances alleging that the Company was subcontracting represented employees' work in violation of the parties' Collective Bargaining Agreement (hereafter, the "Agreement"). See Decision, page 1.

<u>Grounds</u>: The Judge's finding is not supported by the record.

Exception No. 3: The Company excepts to the Judge's finding that, on July 22, 2020, the Union requested much of the same information the Union previously requested. See Decision, page 1.

<u>Grounds</u>: The Judge's finding is not supported by the record.

Exception No. 4: The Company excepts to the Judge's finding that, on July 22, 2020, the Union requested a list of all represented employees affected by the "brown outs" since March 1, 2020. See Decision, page 1.

Grounds: The Judge's finding is not supported by the record.

**Exception No. 5:** The Company excepts to the Judge's finding that AMR refused to provide the Union with any of the information at issue. <u>See</u> Decision, page 1.

<u>Grounds</u>: The Judge's finding is not supported by the record.

Exception No. 6: The Company excepts to the Judge's finding that AMR violated the National Labor Relations Act (hereafter, the "Act") substantially in the ways alleged by the General Counsel. See Decision, page 1.

Grounds: The Judge's finding is not supported by the record and is the result of an improper and defective legal analysis, which deprived the Company of its rights to a fair hearing.

## **STATEMENT OF THE CASE**

Exception No. 7: The Company excepts to the Judge's ruling whereby he denied the Company's Motion for Leave to Amend the Answer. See Decision, page 2, fn. 3.

Grounds: The Judge's ruling was erroneous as a matter of law and an abuse of discretion. A challenge to the General Counsel's authority to issue and prosecute an unfair labor practice complaint is not subject to waiver and may be raised at any time. See *e.g.*, Noel Canning v. NLRB, 705 F.3d 490, 497 (D.C. Cir. 2013).

**Exception No. 8:** The Company excepts to the Judge's statement that he carefully reviewed the parties' post-hearing briefs. See Decision, page 2, line 10.

<u>Grounds</u>: The Judge's statement is not supported by the record.

#### **FINDINGS OF FACT**

Exception No. 9: The Company excepts to the entirety of footnote 5. See Decision, page 2.

<u>Grounds</u>: The Judge's footnote is not sufficient evidence that the Judge engaged in proper fact-finding.

# **II.** Alleged Unfair Labor Practices

## A.) Respondent's Operations

Exception No. 10: The Company excepts to the Judge's finding that "American Medical Response" has facilities throughout the United States, including four divisions in Connecticut. See Decision, page 3, lines 6-7.

Grounds: The Judge's finding is not supported by the record.

B.) Collective Bargaining Relationship and Terms of the Agreement
Exception No. 11: The Company excepts to the findings set forth in footnote
7. See Decision, page 3.

<u>Grounds</u>: The Judge's findings are not supported by the record.

Exception No. 12: The Company excepts to the Judge's finding that represented employees select their shifts through Telestaff. See Decision, page 4, lines 34-35.

Grounds: The Judge's finding is not supported by the record.

#### C.) October 2019 Grievance<sup>1</sup>

Exception No. 13: The Company excepts to the Judge's finding that the 2019 grievance was filed after Montanaro received reports that Bridgeport ambulances / crews were handling emergency calls and routine transports in the New Haven area. See Decision, page 4, lines 45-48.

<u>Grounds</u>: The Judge's finding is not supported by the record.

Exception No. 14: The Company excepts to the Judge's findings as they relate to the terms on which the parties resolved the October 2019 grievance. See Decision, page 5, lines 3-5.

<u>Grounds</u>: The Judge's findings are not supported by the record.

Exception No. 15: The Company excepts to the credibility determinations set forth by footnote 9. See Decision, page 5.

Grounds: The Judge's determinations are not supported by the record and are the result of an improper and defective legal analysis, which deprived the Company of its rights to a fair hearing.

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<sup>&</sup>lt;sup>1</sup> In the Decision, the October 2019 Grievance is mistakenly assigned the letter "D." See Decision, page 4.

## D.) COVID-19 Crisis and Scheduling

Exception No. 16: The Company excepts to the extent the Judge found that the only portion of the March 16, 2020 letter that is relevant to the case is the portion quoted by the Decision. See Decision, page 5, lines 17 - 2.

Grounds: The Judge's finding is not supported by the record and is the result of an improper and defective legal analysis, which deprived the Company of its rights to a fair hearing.

#### E.) Union's May 7 Request for Information

Exception No. 17: The Company excepts to the Judge's description of the email exchange between Montanaro and Schietinger on May 2, 2020. See Decision, page 6, lines 1-8.

<u>Grounds</u>: The Judge's description is not supported by the record.

Exception No. 18: The Company excepts to the Judge's description of the email exchange between Montanaro and Schietinger on May 4, 2020. See Decision, page 6, lines 10 - 20.

<u>Grounds</u>: The Judge's description is not supported by the record.

Exception No. 19: The Company excepts to the Judge's findings related to the phone call between Schietinger and Smith. See Decision, page 6, lines 25 - 32. Grounds: The Judge's findings are not supported by the record.

Exception No. 20: The Company excepts to the Judge's description of the email exchange between Montanaro and Schietinger on May 18, 2020. See Decision, page 7, lines 5-10.

<u>Grounds</u>: The Judge's description is not supported by the record.

Exception No. 21: The Company excepts to the Judge's findings related to the phone call between Nupp and Smith. See Decision, page 7, lines 10-20.

<u>Grounds</u>: The Judge's findings are not supported by the record.

Exception No. 22: The Company excepts to the entirety of footnote 13. See Decision, page 7.

Grounds: The Judge's findings are not supported by the record and are the result of an improper and defective legal analysis, which deprived the Company of its rights to a fair hearing.

Exception No. 23: The Company excepts to the Judge's finding that, on June 10, 2020, Smith responded to Nupp in an e-mail that made the statements referenced by the Decision. See Decision, page 8, lines 18.

<u>Grounds</u>: The Judge's finding is not supported by the record.

# F.) Union's June 15 Request for Information

Exception No. 24: The Company excepts to the Judge's finding that, on July 2, 2020, Smith resent the June 15, 2020 information request. See Decision, page 9, line. 13.

<u>Grounds</u>: The Judge's finding is not supported by the record.

## G.) Union's July 8 and 16 Grievances

Exception No. 25: The Company excepts to the Judge's findings as they relate to the July 16, 2020 grievance. See Decision, page 9, lines 20-25.

Grounds: The Judge's findings are not supported by the record.

# H.) Union's July 22, 2020 Request for Information

Exception No. 26: The Company excepts to the Judge's finding related to Article 16 of the Agreement. See Decision, page 10, lines 30-33.

Grounds: The Judge's finding is the result of an improper and defective legal analysis, which deprived the Company of its rights to a fair hearing.

Exception No. 27: The Company excepts to footnote 16 to the extent the Judge found the referenced requests to be the same. See Decision, page 11.

<u>Grounds</u>: The Judge's finding is not supported by the record.

# **ANALYSIS**

# A.) Complaint Allegations and Answer

Exception No. 28: The Company excepts to the Judge's summary of the parties' respective pleadings. See Decision, page 11, lines 25 – 35.

Grounds: The Judge's summary of the pleadings is not fully accurate.

## B.) Legal Standard

Exception No. 29: The Company excepts insofar as the Judge did not apply all of the referenced legal standards to the General Counsel's allegations. See Decision, page 11, line 40 to page 12, line 35.

<u>Grounds</u>: The Judge was required to apply governing law.

#### C.) Relevancy

Exception No. 30: The Company excepts to the Judge's finding that the Union met its burden of establishing relevance. See Decision, page 12, line 39.

Grounds: The Judge's finding is not supported by the record and is the result of an improper and defective legal analysis, which deprived the Company of its rights to a fair hearing.

Exception No. 31: The Company excepts to the Judge's finding that Smith expanded on concerns in his communications with Nupp in May through July 2020. See Decision, page 12, line 43.

<u>Grounds</u>: The Judge's finding is not supported by the record.

Exception No. 32: The Company excepts to the Judge's finding that Montanaro and Smith's communications and the surrounding circumstances established the relevance of the information requested by the Union. See Decision, page 12, line 43 - 45.

Grounds: The Judge's finding is not supported by the record and is the result of an improper and defective legal analysis, which deprived the Company of its rights to a fair hearing.

Exception No. 33: The Company excepts to footnote 19. See Decision, page 12.

<u>Grounds</u>: The Judge's analysis of whether the Union established the relevance of the requested information was not confined solely to the Union's statements to the Company.

Exception No. 34: The Company excepts to the entirety of the Judge's analysis as to the relevance of the Union's request for "[t]he list(s) of unit employees removed from the schedule / affected by the brown outs since March 1, 2020." See Decision, page 13, lines 1 – 20.

Grounds: The Judge's analysis is improper and defective, based upon factual findings that are not supported by the record, and demonstrates the fact the Company was deprived of its rights to a fair hearing.

Exception No. 35: The Company excepts to the entirety of the Judge's analysis as to the relevance of the Union's request for "New Haven call volume data and the number of New Haven calls responded to by non-unit employees." See Decision, page 13, lines 20 - 35, fn. 20.

Grounds: The Judge's analysis is improper and defective, based upon factual findings that are not supported by the record, and demonstrates the fact the Company was deprived of its rights to a fair hearing.

Exception No. 36: The Company excepts to the entirety of the Judge's analysis as to the relevance of the Union's request for "New Haven response times and any related policy / procedure / standard operating guidelines." See Decision, page 13, line 35 to page 14, line 4.

Grounds: The Judge's analysis is improper and defective, based upon factual findings that are not supported by the record, and demonstrates the fact the Company was deprived of its rights to a fair hearing.

Exception No. 37: The Company excepts to the Judge's overall finding that "all of the requested information at issue has potential or probable relevance to the Union in evaluating, filing, and processing grievances over potential violations of the Agreement." See Decision, page 14, lines 4-5.

Grounds: The Judge's finding is not supported by the record and is the result of an improper and defective legal analysis, which deprived the Company of its rights to a fair hearing.

#### D.) Respondent's Defenses

Exception No. 38: The Company excepts to the Judge's description of the Company's waiver defense and related arguments. See Decision, page 14, lines 8 – 17.

<u>Grounds</u>: The Judge did not accurately or fully describe the Company's defense and related arguments.

Exception No. 39: The Company excepts to the entirety of the Judge's analysis of the Company's waiver defense. See Decision, page 14, lines 19 – 37.

Grounds: The Judge's analysis is improper and defective, based upon factual

findings that are not supported by the record, and demonstrates the fact the Company was deprived of its rights to a fair hearing.

Exception No. 40: The Company excepts to the Judge's description of the Company's defense and related arguments that some of the Union's information requests were overly broad. See Decision, page 14, lines 40 - 50.

Grounds: The Judge did not accurately or fully describe the Company's defense and related arguments.

Exception No. 41: The Company excepts to the entirety of the Judge's analysis of the Company's defense some of the Union's information requests were overly broad. See Decision, page 14, lines 40 - 50.

Grounds: The Judge's analysis is improper and defective, based upon factual findings that are not supported by the record, and demonstrates the fact the Company was deprived of its rights to a fair hearing.

Exception No. 42: The Company excepts to the entirety of the Judge's analysis of the Company's defense that the call volume requested by the Union was proprietary. See Decision, page 15, lines 15 - 25.

Grounds: The Judge's analysis is improper and defective, based upon factual findings that are not supported by the record, and demonstrates the fact the Company was deprived of its rights to a fair hearing.

Exception No. 43: The Company excepts to the Judge's finding that the Company violated Sections 8(a)(5) and 8(a)(1) of the Act by failing and refusing to provide the Union with all of the requested information aside from the Company's response time policy / procedure / standard operating guidelines. See Decision, page 15, lines 37 - 38.

<u>Grounds</u>: The Judge's finding is not supported by the record and is the result of an improper and defective legal analysis, which deprived the Company of its rights to a fair hearing.

## **CONCLUSIONS OF LAW**

Exception No. 44: The Company excepts to the entirety of Paragraphs (4) and (5) of the Judge's Conclusions of Law. See Decision, page 16, lines 5 – 14.

Grounds: The Judge's conclusions are not supported by the record and are the result of an improper and defective legal analysis, which deprived the Company of its rights to a fair hearing.

#### **ORDER**

Exception No. 45: The Company excepts to the entirety of the Judge's Order, including but not limited to the Judge's Order that the Company provide the Union with any of its call volume. See Decision, page 16, line 16 to page 17, line 13.

Grounds: The Judge's Order is not supported by the record and is the result of an improper and defective legal analysis, which deprived the Company of its rights to a fair hearing.

## **APPENDIX**

Exception No. 46: The Company excepts to the entirety of the Appendix, whereby the Judge sets forth a proposed Notice, including but not limited to the portion of the Notice that provides the Company will provide the Union with "data showing the call volume since March 1."

Grounds: The Notice is not supported by the record and is the result of an improper and defective legal analysis, which deprived the Company of its rights to a fair hearing.

Dated: Glastonbury, Connecticut April 22, 2021

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NAGE / SEIU LOCAL 5000

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#### **CERTIFICATE OF SERVICE**

The Undersigned, Bryan T. Carmody, being an Attorney duly admitted to the practice of law, does hereby certify, pursuant to 28 U.S.C. § 1746, that, on April 22, 2021, the Respondent's Exceptions to Decision issued by Administrative Law Judge Andrew Gollin were served upon the following *via* email:

John McGrath
Counsel for the General Counsel
National Labor Relations Board, Subregion 34
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Douglas Hall
Attorney for Charging Party
3510 Main Street
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Dated: Glastonbury, Connecticut

April 22, 2021

Respectfully s	ubmitted,	
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